



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion into the programs, practices and policies related to implementation of the California Environmental Quality Act as it applies to jurisdictional telecommunications utilities.

Rulemaking 00-02-003

**COMMENTS OF THE
DIVISION OF RATEPAYER ADVOCATES ON THE DRAFT DECISION
MODIFYING THE COMMISSION'S APPLICATION OF CEQA TO
TELECOMMUNICATIONS UTILITIES**

In accordance with Rule 77.5 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these Comments on the Draft Decision Modifying the Commission's Application of CEQA to Telecommunications Utilities (DD). Silence on a particular issue should not be construed as assent.

DRA supports the DD and its proposed modifications to the Commission's proposed ETP process insofar as it promotes the critical objectives of competitive and technological neutrality vis a vis a reasonably efficient environmental review process. The modified proposal effectively addresses parties' concerns while setting forth a modified ETP review process that is narrower in scope than the Commission's original ETP proposal while meeting the goals of this rulemaking. Furthermore, the Commission's modified ETP should assist in creating more consistent environmental regulations, thereby helping to remove one barrier to competition.

The modified ETP proposal is a promising initiative that sets forth uniform construction permitting requirements consistent with the Commission's objective in this proceeding of competitive and technological neutrality among telecommunications

carriers. In addressing parties' concerns, the DD provides modifications to the proposed ETP, which are reasonable because they remain compliant with CEQA and standardize the review process without imposing additional unnecessary review requirements on carriers. Furthermore, if adopted, the modified ETP will result in more consistent regulatory treatment for all carriers, which will hopefully assist in increasing consumer choice. In attempting to streamline the scope of the ETP process, the modified DD reasons that the rationale behind the Commission's current policy of "limited facilities-based" authority should also apply to the proposed construction permitting process. Accordingly, the DD exempts construction in and on existing buildings and structures so long as such activity results in "no significant visual impact" and does not "take place on or adjacent to a particularly sensitive environment."¹ This approach strikes an effective balance between the efficiency of review and compliance with CEQA.

However, as the DD correctly acknowledges, there is a natural disparity in CEQA review requirements between incumbents and market entrants. The DD states that incumbents could "essentially get a new system while undergoing less CEQA review than a new entrant," but it also reasons that this proceeding may not be an appropriate forum "to redress any and all perceived competitive imbalances."² While DRA agrees with the DD, ideally, regulatory equality among carriers is not incompatible with an effective construction permitting process. Despite this inherent advantage for incumbents, the modified proposal is a step forward in establishing a more competitively neutral construction permitting process, regardless of the potential multiplicity of vintages of CPCNs among telecommunications carriers.

The modified ETP proposal would effectively result in a more efficient and competitively and technologically neutral construction permitting process to telecommunications carriers, hopefully resulting in greater consumer choice as well. Thus, the DD should be adopted in its current form.

¹ Opinion Modifying the Commission's Application of the California Environmental Quality Act to Telecommunications Utilities (Modified DD), June 20, 2006, at 12.

² Modified DD at 15.

Respectfully submitted,

/s/ NATALIE L. BILLINGSLEY

Natalie L. Billingsley
Program and Project Supervisor
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone No.: 415-703-1368
Fax No.: 415-703-1981
E-mail: gonzo@cpuc.ca.gov

July 10, 2006

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I hereby certify that I have this day served a copy of the foregoing document
**“COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE
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/s/ REBECCA ROJO

REBECCA ROJO

N O T I C E

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E-Mail Addresses

thompson@wrightlaw.com
mbwigmore@swidlaw.com
aabshez@irell.com
riystad@crblaw.com
thomas.k.braun@sce.com
lori.ortenstone@pactel.com
rbd@cityatty.sannet.gov
lbiddle@ferrisbritton.com
troberts@sempra.com
esther.northrup@cox.com
lpanzino@sdd.sbcounty.gov

rcosta@turn.org
rudy.reyes@verizon.com
ndw@cpuc.ca.gov
lisa.gelb@sfgov.org

steve.bowen@bowenlawgroup.com
cjh5@pge.com
david.discher@att.com
emery.borsodi@sbc.com
elichtblau@orrick.com
rejohnson@att.com
mwand@mofo.com
stephen.h.kukta@sprint.com
camille@stoverlaw.net
glenn@stoverlaw.net
rgloistein@orrick.com
pcasciato@sbcglobal.net
gblack@cwclaw.com
smalllecs@cwclaw.com
jguzman@nossaman.com
kfugere@steefel.com
marklegal@sbcglobal.net
mday@gmssr.com
smalllecs@cwclaw.com
sleeper@steefel.com
davidmarchant@dwt.com
tregtremont@dwt.com
ens@loens.com
john_gutierrez@cable.comcast.com
bgranger@pacbell.mobile.com
valle-riestra@ci.walnut-creek.ca.us
anitataffrice@earthlink.net
pcw@meyersnave.com
dmw@wblaw.net
johnm@calindian.org
ll@calcable.org

glcastro@pacbell.net
rl@comrl.com

drscott@czn.com
mremy@rtandm.com
spuccini@dfg.ca.gov
eswansiger@kelleydrye.com
msmith@kelleydrye.com
jpfaff01@sprintspectrum.com
szimmer@newhall.com
case.admin@sce.com
mshames@ucan.org
esther.northrup@cox.com
mrherbert@att.com
elaine.duncan@verizon.com
kristin.l.jacobson@sprint.com
marcel@turn.org
davidjmiller@att.com
fassil.t.fenikile@att.com
pcook@ene.com
mcazorla@coastal.ca.gov
cheryl_hills@icgcomm.com
jennifer.hernandez@hklaw.com
edwardoneill@dwt.com
douglas.garrett@cox.com
esprague@pacwest.com
cborn@czn.com
cpark@kmtg.com
mcf@calcomwebsite.com
u06@cpuc.ca.gov
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ltc@cpuc.ca.gov
omv@cpuc.ca.gov
jpn@cpuc.ca.gov
pva@cpuc.ca.gov
harrison.pollak@doj.ca.gov
raissa.lerner@doj.ca.gov
l_mnahc@pacbell.net
sanderd@slc.ca.gov